

**VICENTE S. UMALI, BENJAMIN CALLEJA, JR., ALBERTO L. LEDESMA
AND EVANGELINE U. LEDESMA, PETITIONERS, VS. HONORABLE
INTERMEDIATE APPELLATE COURT AND SPOUSES HONORIO AND
SOLINA EDA...**

G.R. No. 63198. June 21, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This petition seeks the review on certiorari of the decision* dated 23 September 1982 of the respondent Court of Appeals in CA-G.R. SP No. 14504, affirming the Orders dated 29 April 1982 and 24 June 1982 issued in Criminal Case No. 1423-I by the Court of First Instance (CFI) of Zambales, Branch II (now Regional Trial Court, (RTC), Iba, Zambales, Branch LXIX).** The respondent court's decision ruled that the question raised in Civil Case No. 8769 pending before the CFI of Quezon, Branch VIII (now RTC, Quezon, Branch LVII) re: annulment/rescission of the sale[1] is not prejudicial to the issues involved in said CR No. 1423-I as to warrant the suspension of proceedings in said criminal case.

The facts material to the present case, as found by the Court of Appeals, are as follows:

"x x x Petitioners are the officers of the Orosea Development Corporation, hereinafter referred to simply as OROSEA. Sometime on September 4, 1979, the petitioners, as officers of OROSEA, purchased from the spouses Honorio and Solina Edano, Lot No. 49 of the Cadastral Survey of Mulanay, Bo. Casay, Mulanay, Province of Quezon, covered by TCT No. RT-(T-36471), in the name of spouses Edano, for the sum of P1,036,-500.00 payable in four installments, as follows:

1st Installment and downpayment

- September 28, 1979

P225,000.00

2nd Installment

- March 31, 1980

271,500.00

3rd Installment

- September 30, 1980

270,000.00

4th Installment

- March 31, 1981

270,000.00

issuing for this purpose four checks drawn against the Chartered Bank, Manila Branch. The first check for P225,000.00 was honored upon its presentment.

By arrangement of the petitioners with the Edano spouses, a deed of absolute sale was executed by the vendors, inspite of the fact that the purchase price has not yet been fully paid. Thus, TCT No. (T-36471) was cancelled and a new transfer certificate of title was issued in the name of OROSEA. Thereafter, OROSEA secured a loan of P1,000,000.00 from the Philippine Veterans Bank using this property as security.

When the check for the second installment fell due, petitioners asked, for two times, deferment of its presentation for payment, the first to June 30, 1980, and the second to July 31, 1980. In the first deferment petitioners issued a check that matured on June 30, 1980 to replace the check that matured on March 31, 1980. On the second deferment petitioners issued another check dated July 31, 1980 to replace the check dated June 30, 1980. This second renewal check was presented with the bank but it was dishonored due to lack of funds. So were the checks postdated September 30, 1980 and March 31, 1981. They were also dishonored upon their presentment for lack of funds. As a consequence of the dishonor of these checks, the Edano spouses filed a complaint for estafa against petitioners. The information was filed by the Provincial Fiscal against petitioners on May 21, 1981, and it was docketed as Criminal Case No. 1423-I. Arraignment was set on September 4, 1981 but petitioners failed to appear. It was reset to October 5, 1981 but this was postponed upon motion of petitioners.

On October 14, 1981, OROSEA filed a Complaint in the Court of First Instance of Quezon against the Edano spouses, docketed as Civil Case No. 8769, for the annulment/rescission of the Contract of Sale executed on September 4, 1979 by and between OROSEA and the Edano spouses covering Lot No. 49 of the Cadastral Survey of Mulanay, and for which the petitioners issued the checks, subject of Criminal Case No. 1423-I.

Criminal Case No. 1423-I was again set for arraignment on November 5, 1980. This was post-poned. With the entry of a new counsel, petitioners filed a motion to quash Criminal Case No. 1423-I, on ground of improper venue, but this motion was withdrawn by petitioners before it could be resolved. The arraignment was again set for January 4, 1982 which was again postponed; then to February 5, 1982, again postponed; then to March 23, 1982. However, before March 23, 1982, petitioners filed, in Criminal Case No. 1423-I, a 'Motion To Suspend Arraignment and Further Proceedings,' with a 'Supplemental Motion To Suspend Proceedings'. This was opposed by the Provincial Fiscal of Quezon. Resolving the motion to suspend, respondent Judge issued his orders, now under question, denying the motion."^[2]

Acting on the "Motion to Suspend Arraignment and Further Proceedings," the Court of First Instance of Zambales, Branch II, in said CR Case No. 1423-I in its order dated 29 April 1982^[3] denied the same for lack of merit; and the motion for reconsideration of said order was likewise denied in the Order dated 24 June 1982.^[4]

A petition for certiorari and prohibition, docketed as CA-GR SP No. 14504, was then filed by herein petitioners with the respondent Court of Appeals. The appellate court, resolving the said petition, rendered the now assailed decision dated 23 September 1982 affirming the questioned orders of the trial court and dismissed the petition for lack of merit. The Court of Appeals ruled that, inasmuch as the issues in CV No. 8769 and CR No. 1423-I are completely different from each other, and that the resolution of one is not necessary for the resolution of the other, the issue involved in CV No. 8769 is not a prejudicial question vis-a-vis the issue in CR No. 1423-I so as to warrant the suspension of the proceedings in the latter case, until the termination of the civil case. In its resolution dated 3 February 1983, the Court of Appeals also denied for lack of merit the petitioners' motion for reconsideration of the said decision.

In this present recourse, the principal issue to be resolved, as in the Court of Appeals, is whether CV No. 8769 involves a prejudicial question in relation to CR No. 1423-I so as to require a suspension of proceedings in the

latter case, until the civil case is disposed of.

We find no merit in the petition.

In arguing that the principle of prejudicial question applies in the case at bar, petitioners contend that, since in CV No. 8769 they seek to annul the deed of sale executed in their favor by the private respondents, on the grounds that the latter committed fraud in misrepresenting that the land they sold to petitioners is free from all liens and encumbrances, and that it is not tenanted, when in truth and in fact, as petitioners later discovered, the land is covered by the land reform program and that vast portions thereof are timber land, hence, allegedly indisposable public land, therefore, according to petitioners, CV No. 8769 involves issues, the resolution of which will determine whether or not petitioners are criminally liable in CR No. 1423-I. They further argue that, if and when the court hearing CV No. 8769 annuls the subject deed of sale, then, their obligation to pay private respondents under the said deed would be extinguished, resulting in the dismissal of CR No. 1423-I.

Petitioners, therefore, in CV No. 8969, in seeking the annulment of the deed of sale on the ground of fraud or misrepresentation, are in effect saying that said deed is voidable, vitiated consent being one of the grounds mentioned in Article 1390[5] of the Civil Code for voiding or annulling contracts. Indeed the well-settled rule is that a contract where consent is vitiated is voidable.[6]

It can not be denied, however, that at the time the acts complained of in CR No. 1423-I were committed, the deed of sale sought to be later annulled in CV No. 8769 was binding upon the parties thereto, including the petitioners. The two (2) essential elements for a prejudicial question to exist are: (a) the civil action involves an issue similar or inti-mately related to the issue raised in the criminal action; and (b) the resolution of such issue in the civil action determines whether or not the criminal action may proceed.[7]

Given the nature of a prejudicial question, and consi-dering the issues raised in CV No. 8769 and CR No. 1423-I, we agree with the ruling of the respondent Court of Appeals that the resolution of the issues in CV No. 8769 is not determinative of the guilt or innocence of the petitioners-accused in CR No. 1423-I, hence, no prejudicial question is involved between the said two (2) cases.

As correctly observed by the appellate court, the issue in CR No. 1423-I is whether or not the petitioners could be found guilty under Batas Pambansa Blg. 22[8] or under Article 315, No. 2(d) of the Revised Penal Code.[9]

More specifically, what private respondents complained of in CR No. 1423-I is that the checks issued by petitioners in their favor were dishonored for lack of funds upon due presentment to the drawee bank. Undeniably, at the time of said dishonor, petitioners' obligation to pay private respon-dents pursuant to the deed of sale, continued to subsist. And because petitioners' checks were dishonored for lack of funds, petitioners are answerable under the law for the consequences of their said acts. And even if CV No. 8769 were to be finally adjudged to the effect that the said deed of sale should be annulled, such declaration would be of no material importance in the determination of the guilt or innocence of petitioners-accused in CR No. 1423-I.

WHEREFORE, the petition is DENIED. The decision dated 23 September 1982 of the Court of Appeals in CA-GR SP No. 14504 is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Elias B. Asuncion and concurred in by Justices Mama D. Busran and Guillermo P. Villazor.

** Then presided by Judge Ramon Mabutas, Jr.

[1] Rollo, p. 35

[2] Ibid., pp. 34-35

[3] Ibid., p. 57

[4] Ibid., pp. 79 and 137

[5] Article 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[6] Rio Grande Rubber Estate Company, Inc. vs. Board of Liquidators, G.R. No. L-11321, November 28, 1958, 104 Phil. 863

[7] Section 5, Rule 111, Rules of Court

[8] BATAS PAMBANSA BLG. 22 (An act penalizing the making or drawing and issuance of a check without sufficient funds or credit and for other purposes) provides:

"SECTION 1. Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two hundred thousand pesos, or both such fine and imprisonment at the discretion of the court."

[9] Article 315, No. 2(d), Revised Penal Code reads:

"(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by Rep. Act No. 4885, approved June 17, 1967)."

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